

NGUYEN (Migration) [2021] AATA 2349 (30 June 2021)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr QUYET TIEN NGUYEN

CASE NUMBER: 1802524

HOME AFFAIRS REFERENCE(S): BCC2016/1310176

MEMBER: Deputy President J.L Redfern PSM

DATE: 30 June 2021

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl.820.211 of Schedule 2 to the Regulations; and
- cl.820.221(1) of Schedule 2 to the Regulations

Statement made on 30 June 2021 at 10:54 AM

CATCHWORDS:

MIGRATION – Partner (Temporary) (Class UK) – Subclass 820 (Partner) visa – whether the applicant and sponsor are in a married relationship – consideration of financial and social aspects of relationship – consideration of nature of commitment to one another and the nature of the household – applicant and sponsor found to be in a genuine spousal relationship – decision under review remitted with direction.

PRACTICE AND PROCEDURE – role of the applicant to provide evidence to establish the case – hearing postponement request made on medical grounds – failure to provide medical evidence in accordance with Practice Direction– failure to provide information and delay.

CASES:

He v Minister for Immigration and Border Protection [2017] FCAFC 206

LEGISLATION:

Migration Act 1958 (Cth), ss 5F, 29, 31, 65

Migration Regulations 1994 (Cth), r.1.15A, Sch 2, cls.820.21 and 820.22

SECONDARY MATERIALS:

COVID-19 Special Measures Practice Direction – Migration and Refugee Division, 2 March 2021.

STATEMENT OF DECISION AND REASONS

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant, Mr Quyet Tien Nguyen, applied for the visa on 24 March 2016, on the basis of his relationship with his sponsor, Ms Shirley Hua. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant.
3. On 25 January 2018, the delegate refused to grant the visa because he was not satisfied Mr Nguyen and Ms Hua were in a married relationship and that Mr Nguyen was the spouse or de facto partner of Ms Hua, as required for the purposes of the Act.
4. By letter dated 4 March 2021, the Tribunal requested that certain information be provided. Mr Nguyen provided further evidence and submissions in support of his claim and appeared before the Tribunal on three occasions; the first to seek an adjournment because of concerns about an outstanding COVID-19 test, the second for the substantive hearing and a third brief hearing to follow-up evidence provided by Mr Nguyen after the second hearing. The substantive hearings were listed on 7 and 24 June 2021. Mr Nguyen, Shirley Hua and two friends gave evidence at the hearing. The first substantive hearing was in-person and the second hearing by video through MS Teams online format. Mr Nguyen was represented by his lawyer. At the second and third hearing he did not need the assistance of an interpreter.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

LEGISLATIVE FRAMEWORK

6. Section 29 of the Act provides that the Minister may grant a non-citizen permission, known as a visa, to travel to and enter Australia, or remain in Australia, or both. Section 31(1) of the Act provides that there are to be prescribed classes of visas and subs (3) provides that the Regulations may prescribe the criteria for visas of a specified class. The prescribed classes of visas are set out in Schedule 1 to the Regulations and include a Temporary and Residence Partner visa, the latter being a permanent visa. Schedule 2 to the Regulations sets out the prescribed criteria relating to the relevant class of visa, including the primary criteria and any secondary criteria. If the Minister is satisfied that the criteria prescribed by the Act or the Regulations have been satisfied, s.65 of the Act provides that the Minister is to grant the visa, or, if not so satisfied, to refuse to grant the visa.
7. There is a two-stage process before a permanent partner visa is granted, with the applicant applying for the provisional or temporary visa and permanent visa at the same time. If the criteria for the temporary visa are met, the visa is granted to allow the applicant to remain in Australia until a decision on the permanent visa is made, which will not be considered until after two years.
8. Part 820 of Schedule 2 to the Regulations prescribes the criteria for a Partner Visa. This is the temporary visa. Clause 820.21 sets out the primary criteria that must be satisfied at the time of the application and cl.820.22 sets out the criteria that must be satisfied at the time of decision.

9. Relevant to the facts in this case, subcl.820.211(2) provides that an applicant will meet the requirements for the subclause if the applicant is the *spouse* or de facto partner of the *sponsoring partner*, who is an Australian citizen, has turned 18 years old and is not prohibited from being a sponsoring partner and if the applicant holds a substantive visa at the time of the application.¹ Subclause 820.221(1) provides that an applicant must continue to meet the criteria in cl.820.211(2) at the time of the decision.
10. As observed by the Full Court in *He v MIBP*, the 'central criterion' for a Partner visa is that the visa applicant must be the spouse of the sponsor.²
11. Section 5F of the Act defines the word "spouse" as follows:

5F Spouse

- (1) For the purposes of this Act, a person is the *spouse* of another person if, under subsection (2), the 2 persons are in a *married relationship*.
- (2) For the purposes of subsection (1), persons are in a *married relationship* if:
- (a) they are married to each other under a marriage that is valid for the purposes of this Act; and
 - (b) they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
 - (c) the relationship between them is genuine and continuing; and
 - (d) they:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis.
- (3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

12. Relevantly, r. 1.15A of the Regulations provides as follows:

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in sub regulation (3).

¹Refer subclause 820.211(2)(a), (c) and (d).

²[2017] FCAFC 206 at [28].

- (3) The matters for sub regulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.

13. According to the Full Court in *He v MIBP*, r. 1.15A is prescriptive and the Tribunal must give "proper, genuine and realistic consideration" to each of the prescribed circumstances, which comprise four principal matters and, thereafter, a series of specific matters relevant to the principal matters. The Full Court found that the Tribunal is required to make findings on each of the prescribed matters, even if the Tribunal's answer may be that there is no material, or insufficient material, to form a conclusion on a prescribed matter. This not only includes the specific matters numbered with Roman numerals but requires findings in respect of the principal matters under the broad headings.³ This is the approach I have taken to the consideration of the relevant criteria for the visa.

BACKGROUND AND OUTLINE OF EVIDENCE

14. Mr Nguyen arrived in Australia as a student in 2012 when he was 17 years old. He completed studies at Macquarie Grammar School and returned to Vietnam for a short period of time before returning to Australia on a student visa in June 2012. Mr Nguyen has a history of residing in Australia for an extended period, undertaking and completing tertiary qualifications from 2013 to about July 2016, when he completed his Bachelor of Business at Blue Mountains International Hotel Management. Movement records obtained from Department records show that Mr Nguyen has lived in Australia since February 2012, returning to Vietnam for short periods and then returning to Australia to complete his studies and work in hospitality.
15. Mr Nguyen lodged an application for the Partner visa in March 2016, following his marriage to Ms Hua on 3 January 2016. Movement records show that Ms Hua travelled to Vietnam for about three weeks shortly following their marriage. Mr Nguyen did not accompany Ms Hua at

³*He v MIBP* at [73] to [77].

that time. Neither travelled overseas until February 2019 when they both travelled together to Vietnam for about five days.

16. In support of his application, Mr Nguyen provided to the Department statutory declarations from Ms Hua's parents and her sister, their marriage certificate and various documents relating to the wedding and reception, limited financial records, such as one joint bank statement, a superannuation beneficiary nomination form signed by Ms Hua nominating Mr Nguyen as the beneficiary, and a joint tenancy agreement dated 19 June 2017. Mr Nguyen also provided a translated copy of a letter from his mother dated 16 December 2015 about why his family could not be at the wedding and wishing them well and copies of Wills executed by him and Ms Hua in March 2016.
17. It is apparent from the decision record of the delegate that neither Mr Nguyen or Ms Hua were interviewed, and the delegate made an assessment based on the application and limited documentary evidence provided by Mr Nguyen. It is noted in the decision record that Mr Nguyen was requested to provide evidence of his relationship with Ms Hua by letter dated 8 May 2017 but, as at the time of the decision, no response was received. It is unfortunate that Mr Nguyen did not avail himself of this opportunity and, unsurprisingly given the limited information provided and apparent lack of engagement by Mr Nguyen in the process, the delegate found that there was insufficient evidence to establish to satisfy him that Mr Nguyen and Ms Hua were a married relationship.
18. Relevantly, Mr Nguyen only provided one bank statement, three pay advices for Ms Hua for a period shortly before they were married, numerous wedding and social photographs and brief statutory declarations from Ms Hua's immediate family members. The delegate was not persuaded by this evidence and noted that the address on Ms Hua's drivers licence, where it was claimed Mr Nguyen and Ms Hua lived after they were married, was inconsistent with the address nominated by Ms Hua on her departure card, which was her parents' home address. The delegate also noted that in the application, Mr Nguyen and Ms Hua had claimed to have known each other since 10 January 2015 after meeting at the home of Ms Hua's parents but movement records revealed that Mr Nguyen was offshore at this time and not in Australia. These issues were subsequently clarified at hearing and by further documents provided by Mr Nguyen.
19. The delegate placed little weight on the Wills and superannuation nomination form and while satisfied that Mr Nguyen and Ms Hua were married, he was not satisfied on the evidence before him that Mr Nguyen and Ms Hua were committed to sharing their life together, that they pooled their resources or that they presented themselves to family and friends as being in a committed partner relationship or that they were regarded by others as such.
20. Given the paucity of information provided by Mr Nguyen and his representative in support of his application for the visa and for a review of the decision of the delegate, I requested that Mr Nguyen provide any further evidence in support of his claims, directed to each of the matters specified in r. 1.15A, prior to the hearing. Mr Nguyen provided more recent bank statements but for only three months and not for the full period requested, an extract from a tenancy ledger which referred to both Mr Nguyen and Ms Hua, an energy bill in the name of Mr Nguyen, an invoice for the purchase of a car in the names of both Mr Nguyen and Ms Hua, details of medical insurance for Ms Hua, copies of boarding passes in relation to the their travel in February 2019 to Vietnam, various photographs of when they were in Vietnam and further statements provided by Ms Hua's parents (Mr Chan Cuong Hua and Ms Hue Thi Phong), and four friends of Mr Nguyen and Ms Hua (Trung Ha Le, Hoai Thu Ngo, Ha My Nguyen and Quoc Vuong Do).
21. The hearing was originally scheduled for 27 May 2021. By the time of the hearing, Mr Nguyen had not provided the further statements set out above or any written submissions in

support of his claims. He provided several medical certificates, including a certificate relating to a consultation three days prior to the hearing stating that the applicant would be “unfit for work/school” from 24 to 27 May 2021, being the day of the hearing, because of a dry cough, fatigue and a sore throat. He was given a referral for a COVID-19 test, but he did not undertake this test prior to the hearing. His representative requested an adjournment for a month so Mr Nguyen could recover. I refused the adjournment because there was insufficient detail about Mr Nguyen’s illness and the evidence provided and the procedure followed did not satisfy the requirements of the *COVID 19 Special Measures Practice Direction* set out in clauses 6.16 to 6.19. The hearing was rescheduled through the MS Teams platform as a remote video hearing, at which time Mr Nguyen and his lawyer renewed their request for an adjournment. I granted the adjournment and requested that Mr Nguyen undertake the COVID-19 test as soon as possible so the hearing could be rescheduled. The hearing was rescheduled, in person, and prior to this date Mr Nguyen provided the results of his negative COVID-19 test.

22. By way of observation, I note that the approach taken by Mr Nguyen to the review was most unsatisfactory. He did not provide the information sought in a timely fashion, he did not provide a medical certificate or request an adjournment in accordance with the Practice Direction and did not provide all evidence that would be relevant to support his claim at the time of the resumed second hearing. This was the case notwithstanding that he was invited to attend the original hearing on 30 March 2021 and was requested to provide the information and any submissions by letter dated 4 March 2021.
23. Mr Nguyen and Ms Hua attended the hearing in person and gave evidence. Their evidence was comprehensive, consistent and, on its face, persuasive. Mr Nguyen also arranged for two witnesses to provide oral evidence about the relationship between him and Ms Hua, Mr Trung Ha Le and Ms Ha My Nguyen, who had also provided brief statements prior to the hearing. However, because Mr Nguyen had not provided all of the information sought to address the requirements of the Partner visa in circumstances where this information was or should have been in his possession and control and he had been given ample opportunity to provide this information to either the Department or the Tribunal, I had reservations about the genuineness of the relationship. To give Mr Nguyen every opportunity to present his claim, I pressed my request for this further information, which related to the joint bank statements for Mr Nguyen and Ms Hua for the whole of the period they claimed to have been in a married relationship, their tax returns and any telephone records of communications between them. This information was finally provided after the second hearing but necessitated a further hearing to clarify certain aspects of this evidence.
24. It is not the role of the Tribunal to establish the applicant’s case, no matter which visa decision is being reviewed. In circumstances where an applicant retains a migration agent or lawyer it would be expected that all information that is available and relevant to an applicant’s claims should be provided to the Tribunal prior to the hearing. This is part of the review process and the Tribunal has issued Practice Directions in relation to its various Divisions to assess applicants and their representatives as to the requirements of the Tribunal when they seek a review. Relevantly, it is for the applicant to satisfy the Tribunal that the requirements for the particular visa have been met. The Tribunal will take a facilitative approach where an applicant is self-represented, but the obligation remains on the applicant to satisfy the presiding member about the claims that have been made.
25. This was an issue raised in the hearing with both Mr Nguyen and his lawyer and Mr Nguyen’s lawyer advised that she had sought this information from Mr Nguyen, but this had not been provided. At the end of the third hearing, Mr Nguyen expressed frustration that he had now attended three hearings. This revealed an apparent misunderstanding of the Tribunal’s role and, relevantly, the critical role of the applicant and his representative, in not

only following the Practice Directions issued by the Tribunal but taking responsibility to provide all relevant evidence and submissions to the Tribunal in support of the review.

26. While ultimately this did not negatively impact on the outcome of the review, the failure to provide relevant evidence and submissions in support of a review, or provide an explanation as to why the information cannot be provided, may leave the Tribunal with no alternative but to draw negative inferences that the information does not exist or would not support the claims made and thereby affirm the decision under review. These observations are made to assist applicants and those who represent them in understanding the importance of complying with the Tribunal's Practice Directions and in providing all relevant evidence, information and submissions to the Tribunal in a timely manner and, at the very least, prior to the hearing and, if further information is requested that arises during the hearing or review process, after the hearing.
27. At the hearing, Mr Nguyen gave evidence about how he came to Australia, the circumstances of meeting with Ms Hua and how they came to be engaged and then married, details of their living arrangements and financial affairs and the social activities undertaken by them.
28. According to Mr Nguyen, he met Ms Hua around the Chinese New Year at a function at her parents' home. He was invited to the function by a close friend of his parents who also knew Ms Hua's parents. The delegate had found this claim not to be credible because the date nominated by Mr Nguyen in his application was 10 January 2015. The delegate was correct to conclude that Mr Nguyen was overseas at this time. However, it is apparent from his evidence that Mr Nguyen had included the wrong date in the application because open sources from the internet show that Chinese New Year in 2015 was actually on 19 February 2015, by which time Mr Nguyen had returned to Australia to continue his studies. As such, Mr Nguyen's evidence about when he and Ms Hua met is not inconsistent with the objective evidence about his travels.
29. According to Mr Nguyen, the relationship between he and Ms Hua developed over time after this and he proposed to her around about the time of his birthday in September 2015. From that time his parents and Ms Hua's parents discussed arrangements in relation to their impending wedding and they decided that they would marry in January 2016. His parents were unable to come to the wedding at that time because they were having difficulties with their business and they were undertaking the construction of their apartment. His sister was in the middle of university studies and at a critical time for those studies and she was not able to attend. Mr Nguyen said that he and Ms Hua lived together after their marriage but Ms Hua travelled overseas in a trip that had been pre-planned to pay her respects to the family following the one year anniversary death of one of Ms Hua's grandparents. She had wanted Mr Nguyen to attend but he was unable to do so because of his studies and work commitments at that time. Mr Nguyen said that Ms Hua worked as a registered nurse for Liverpool Hospital but had also previously worked at Australia Post. He said that they lived a very quiet life. He spent most of his time working and promoting his new business, which was training new baristas. Ms Hua also spent most of her time working. She had a very demanding role working in the intensive care unit. Apart from working, they watched movies together and occasionally held dinner parties for friends. Mr Nguyen was a good cook and liked to do most of the cooking. He used to play soccer a few years ago but had to stop playing because of an injury. Mr Nguyen said that he entered a lot of coffee competitions and this was one of his main interests. He and Ms Hua would go shopping together and spent most of their time together rather than with other friends, mostly keeping to themselves. Mr Nguyen was a credible witness and was able to provide details about Ms Hua's education, her interests and work.

30. Ms Hua also gave evidence about their finances, the circumstances leading to their engagement and marriage and their day-to-day activities and the social aspects of their lives. The evidence of Mr Nguyen and Ms Hua was consistent in relation to these matters. Ms Hua said that when she first met Mr Nguyen, she had a crush on him, and she was pleased when they started communicating with each other after her parents' function. Ms Hua was able to provide a number of details about Mr Nguyen that were consistent with his evidence. She explained the arrangements in relation to the wedding, which was not large. Mr Nguyen was able to name a number of people who attended the wedding, many of which were relatives of Ms Hua and school or work friends of both of them. Ms Hua was also a credible witness.
31. Ms Ha My Nguyen gave evidence that she had known Mr Nguyen and Ms Hua for about three years. She frequented a coffee shop where Mr Nguyen was the barista and they eventually became friends. She visited his house every few weeks to have dinner with Mr Nguyen and Ms Hua. According to Ms Ha My Nguyen, she believes Mr Nguyen and Ms Hua are in a genuine relationship and that they loved each other. She had observed Mr Nguyen give roses and gifts to Ms Hua and was present when Mr Nguyen and Ms Hua had talked about their plans and wanting to purchase a house. Ms Ha My Nguyen said that she would not have come to the hearing to give evidence unless you genuinely believed that Mr Nguyen and Ms Hua were in a genuine relationship.
32. Mr Trung Ha Le gave evidence that he first met Mr Nguyen in 2018 and met Ms Hua later through his friendship with Mr Nguyen. He said that he visited Mr Nguyen and Ms Hua in their unit in Campsie about once a month. Their unit in Campsie was close to his café. They would sometimes go out to dinner together but most of the time he would have meals at their house because Mr Nguyen enjoyed cooking. He knew that Mr Nguyen and Ms Hua were trying to save money and they had discussed a long-term plan of opening a coffee shop together.
33. Mr Trung Ha Le and Ms Ha My Nguyen were credible witnesses.
34. In addition to this evidence, Mr Nguyen provided updated statements from his mother-in-law and father-in-law confirming that Mr Nguyen met their daughter at a house party held in their home in February 2015, that their daughter lived with Mr Nguyen in an apartment and that Mr Nguyen and Ms Hua visited them regularly for family dinners. Both declared that they strongly believed Ms Hua and Mr Nguyen were in a genuine and continuing relationship. Written statements were provided by Quoc Vuong Do and Hoai Thu Ngo. Ms Hua is a regular customer of Hoai Thu Ngo. Ms Ngo stated that Ms Hua would talk about Mr Nguyen and that from these discussions she formed a view that the relationship between Mr Nguyen and Ms Hua was "real". According to Mr Do, he has known Mr Nguyen since about 2017. They have been best friends since this time and he has observed Mr Nguyen and Ms Hua together. Mr Do described the relationship between Mr Nguyen and Ms Hua stated to the effect that he believed they cared for each other and relied on each other. Mr Do was not available to give oral evidence to the Tribunal because at the time of the hearing he had relocated to Tasmania.

CONSIDERATION

35. There is no dispute that at the time of the application Ms Hua was an Australian citizen, she was over 18 years old and she was not prohibited from being a sponsor under cl.820.211(2B) of Schedule 2 to the Regulations. Nor is there any dispute that this continues to be the case at the time of my decision. As such, subject to being satisfied that Mr Nguyen is the spouse of Ms Hua as defined by s.5F of the Act, Mr Nguyen would meet subcl.820.211(2)(a) and (c) of Schedule 2 to the Regulations. There is no dispute that Mr Nguyen had a substantive visa at the time of his application, being a student visa, and as

such would also have met subcl.820.211(2)(d) of Schedule 2 to the Regulations at the time of the application.

36. If I am satisfied that Mr Nguyen is the spouse of Ms Hua at the time of application and that they continue to be so at the time of my decision, I may also be satisfied that Mr Nguyen meets the requirements of subcl.820.221(1) of Schedule 2 to the Regulations.
37. Accordingly, the critical issue for determination in this case is whether Mr Nguyen is, and was at the relevant time, the *spouse* of Ms Hua. This turns on the question of whether they are, and were at the relevant time, in a *married relationship*.
38. Mr Nguyen and Ms Hua were married on 3 January 2016 and provided evidence of this to the delegate and to the Tribunal. The validity of their marriage is uncontentious. The delegate made a positive finding to this effect. In the absence of evidence to the contrary, I accept the validity of their marriage and find accordingly. However, a lawful marriage is not enough to establish a married relationship for the purposes of the Act.
39. As noted, s.5F of the Act provides that for persons to be in a “married relationship” there must also be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship, which includes evidence of the financial and social aspects of the relationship, the nature of the household and commitment of the visa applicant and sponsor to each other.
40. In making this assessment I must consider each of the matters referred to in reg 1.15A. The evidence relevant to the consideration of those matters and my findings are set out below.

Financial aspects of the relationship

41. Mr Nguyen and Ms Hua gave oral evidence that they pool their financial resources and share household expenses.
42. In addition to this, and in response to my request, Mr Nguyen provided the bank statements for the period from March 2016 to May 2021 which supported this claim. The bank account was with Westpac and was held jointly by Mr Nguyen and Ms Hua. There were over 300 pages of bank statements provided by Mr Nguyen. Close examination of the account shows that Ms Hua’s salary is deposited into the account on a regular basis. It was also apparent that there are regular significant cash deposits into the account and that rental payments for the property rented by Mr Nguyen and Ms Hua are paid from this account. According to Mr Nguyen, he paid the income that he received from his barista work and from his business into the account as cash deposits.
43. Prior to the second hearing, Mr Nguyen provided details of a sample of the cash deposits he claims that he made. In his evidence during the second hearing he gave detailed evidence about various payments made into this account. One of the deposits referred to be Mr Nguyen was a refund of approximately \$8,000 from the Australian Tax Office. The account is actively operated and contains many transactions, some of which are obviously payments for household or living expenses. Mr Nguyen also explained a number of large cash deposits paid into the account in September 2020 which he said comprised amounts paid by him or borrowed from his parents, parents-in-law or a friend to fund his new business. The amounts deposited totalled \$30,000, which Mr Nguyen said he needed for his business, firstly, to purchase equipment and, secondly, for cash flow for the payment of rental and other living expenses in the months following the commencement of his business. Examination of the bank statements shows movements in the account that is consistent with this evidence.

44. Based on the evidence provided, I am satisfied that Mr Nguyen and Ms Hua jointly operate a bank account with Westpac, into which Ms Hua's salary and Mr Nguyen's income are paid into on a regular basis. I am also satisfied that various expenses, some of which would appear to be joint household expenses including rental, are paid from this account. I am satisfied that they jointly own a Mazda 2016 motor vehicle, having regard to the purchase invoice provided. Neither own real estate but they have a joint liability for rent, evidenced by the joint rental agreement provided dated 19 June 2017.
45. In summary, the documentary evidence provided about the financial affairs of Mr Nguyen and Ms Hua corroborates their oral evidence given during the hearing.
46. I find, based on the available evidence, that Mr Nguyen and Ms Hua jointly own a car, have joint liability for rent and appear to pool their financial resources and share, to the extent possible, day-to-day household expenses. Overall, I find that the financial aspects of the relationship between Mr Nguyen and Ms Hua are consistent with being in a married relationship.

Nature of the household

47. I am satisfied that there is cogent and persuasive evidence Mr Nguyen and Ms Hua have lived together since they married in January 2016, apart from a brief absence when Ms Hua was in Vietnam to visit her family for three weeks from late January 2016. The evidence from Mr Nguyen and Ms Hua, which was consistent, was that they initially lived in Arncliffe for about three years and then moved to Campsie where they now live. The evidence provided in support of this was the tenancy agreement for Arncliffe which was in their joint names and the rental ledger for Campsie, which was also in their joint names. The delegate was not satisfied that Mr Nguyen and Ms Hua lived together because Ms Hua had noted on her passenger card in 2016 the address for her parents' house at Cabramatta. However, I am not troubled by this because this card was completed within weeks of Ms Hua's marriage on her trip to Vietnam and it is possible that she included this address as an oversight or by habit. I am also persuaded by the independent evidence of witnesses, Mr Trung Ha Le and Ms Ha My Nguyen, who both say that they have known them for a few years, confirm that they live together and that they have visited them in their home.
48. Mr Nguyen and Ms Hua do not have children as a result of their relationship and, as such, they do not have joint responsibility for care and support of children. This matter is therefore neutral, particularly as many couples do not have children or do not have children at the time of assessment of the criteria for the visa. Suffice to say the absence of children with such a young couple is not remarkable and does not, on its own, militate for or against the existence of a married relationship.
49. I accept the evidence of Mr Nguyen and Ms Hua that they not only live together as a couple and have done so since January 2016, but they share household work and regularly shop and watch movies together. These matters are indicative of a married relationship.

Social aspects of the relationship

50. Mr Nguyen provided photographs of his and Ms Hua's wedding and their trip to Vietnam in February 2019. It was apparent from these photographs and from the evidence given by Mr Nguyen and Ms Hua about these events, that the wedding was genuine and that they have travelled as a couple. This is also supported by the evidence provided by Mr Trung Ha Le and Ms Ha My Nguyen, who not only provided statements but gave oral evidence about these matters. It is relevant to note that both attended in person, which would have been inconvenient because they both live and work outside the city and said that they had been

required to make alternative arrangements in relation to work and childcare arrangements. As already observed, I found their evidence to be credible.

51. There is further independent evidence that Mr Nguyen and Ms Hua present themselves as a married couple to others, as evidenced by the statutory declarations provided by their family and friends and the fact that Mr Nguyen has declared Ms Hua as his “spouse” in his tax returns for the last three financial years.
52. In summary, I am satisfied that the social aspects of the relationship between Mr Nguyen and Ms Hua are consistent with them being in a married relationship.

Nature of persons' commitment to each other

53. I am satisfied that Mr Nguyen and Ms Hua have been together as a couple from at least June 2015, when Mr Nguyen said that he asked Ms Hua to be his girlfriend. The evidence of Mr Nguyen and Ms Hua about how they met and how their relationship developed until their marriage in January 2016 was consistent and credible. I am also satisfied that this relationship has been continuous since this time and that over this period they have provided companionship and emotional support to each other.
54. Mr Nguyen gave evidence about Ms Hua's studies, her graduation, and her work pressures. Notably, his evidence was detailed and convincing. Ms Hua gave evidence about Mr Nguyen's previous sporting activities and his keen interest in coffee competitions. It was apparent that she supported his venture to establish his barista training business. Mr Nguyen and Ms Hua have been together since their late teens; Ms Hua was still at school when she first met Mr Nguyen, and Mr Nguyen was not long out of school and was studying. They are still young, but I am satisfied on the evidence before me that Mr Nguyen and Ms Hua have been together as a couple for six years.
55. Ms Hua has nominated Mr Nguyen as her beneficiary for superannuation purposes and both have executed Wills appointing each other as executors and leaving their assets to each other. I give these matters little weight because these arrangements can be easily documented and just as easily reversed. Neither have significant assets in any event. However, these matters are generally supportive of other more compelling evidence, such as the longevity of their relationship, the evidence provided by others about the nature of their commitment to each other and text messages provided, which showed a caring and close relationship. Relevantly, these texts appeared to be genuine and uncontrived.
56. I am therefore satisfied, based on the evidence from Mr Nguyen and Ms Hua and close friends and relatives, that they have a long-term and genuine commitment to each other, indicative of a married relationship.

Conclusion

57. Having regard to my findings set out above, I am satisfied that Mr Nguyen and Ms Hua have a mutual commitment to a shared life as husband and wife to the exclusion of all others. There is no suggestion that either of them is or has been involved in other relationships from the time that they first met and became engaged. I am also satisfied that their relationship is genuine and continuing and, on the evidence before me, I am satisfied that this has been the case since at least January 2016 when they married. I am also satisfied that Mr Nguyen and Ms Hua have lived together for this period.
58. Given these findings I am satisfied that the requirements of s.5F(2) of the Act are met at the time of the application of the visa and at the time of this decision. Therefore, Mr Nguyen meets subclauses 820.211(2)(a) and (c) and clause 820.221(1) of Schedule 2 of the

Regulations. Mr Nguyen also meets cl 820.211 as an applicant is only required to meet one of subclauses (2), (5), (7), (8) or (9) to meet the clause and I have found that he meets all subclauses of cl.820.211(2) of Schedule 2 to the Regulations.

59. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

60. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl 820.211 of Schedule 2 to the Regulations; and
 - cl 820.221(1) of Schedule 2 to the Regulations.

J.L Redfern PSM
Deputy President